

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VANESSA TANNER,

Plaintiff,

vs.

No. 10-CV-536 JEC/RHS

THOMASON LAW FIRM, PC
AND WAKEFIELD & ASSOCIATES, INC.,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff's Motion for Leave to File Sur-Reply in Opposition to Defendants' Motion to Dismiss, filed July 28, 2010 (Doc. 12) ("Motion"). Having considered the Motion, the Defendants' failure to respond thereto, and the governing authority, the Court will grant the Motion.

On June 28, 2010 Defendants filed their Motion to Dismiss Plaintiff's Complaint (Doc. 3). On July 12, 2010, Plaintiff filed her Response to Defendants' Motion to Dismiss (Doc. 7). On July 27, 2010, Defendants filed their Reply to Plaintiff's Response to Defendant's motion to Dismiss (Doc. 9). In their Reply, Defendants asserted a defense based upon application of the *Rooker-Feldman* doctrine for the first time. Plaintiff, following the procedure required by D.N.M.LR-Civ. 7.4(b), filed her Motion requesting leave to file a surreply. Defendants did not respond to Plaintiff's Motion.

The Tenth Circuit has held that, when a district court accepts a reply brief from a movant that contains new material or argument, the court must either permit a surreply from the

nonmovant or must refrain from relying on the new material or argument in ruling on the motion. *See Beaird v. Seagate Tech., Inc.*, 145 F.3d 1159 (10th Cir. 1998). Because Defendants indeed argued that the *Rooker-Feldman* doctrine operates to preclude Plaintiff's claims for the first time in their Reply brief, Plaintiff's Motion will be granted and the Court will consider the surreply before deciding Defendants' motion to dismiss.

WHEREFORE,

IT IS ORDERED that Plaintiff's Motion for Leave to File Sur-Reply in Opposition to Defendants' Motion to Dismiss, filed July 28, 2010 (Doc. 12) is **GRANTED**.

Dated January 25, 2011.



SENIOR UNITED STATES DISTRICT JUDGE